

**ASSEMBLY BILL**

**No. 2578**

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**Introduced by Assembly Member Lieu**

February 22, 2008

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An act to amend Sections 688.020 and 688.030 of the Code of Civil Procedure, and to amend Sections 1701.2 and 2104 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as introduced, Lieu. Public Utilities Commission: procedures and remedies.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law authorizes the commission to determine whether a proceeding requires a hearing, authorizes the commission to assign one or more commissioners and administrative law judges to oversee cases, and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases. Existing law authorizes the commission to impose various remedies upon finding a violation of the Public Utilities Act or certain other violations, and makes any public utility and any corporation other than a public utility, that violates the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission guilty of a crime.

This bill would authorize the commission, when the commission institutes an investigation on its own motion in an adjudication case, to determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by

the commission, and if so found, to order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution. The bill would require the respondent to demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within 7 days of the commission adopting an investigation order. The bill would authorize the commission to delegate to the attorney for the commission the authority to determine whether a sufficient showing has been made by the respondent of an ability to pay and would authorize the respondent to request impartial review by an administrative law judge.

This bill would provide that if the commission determines that an individual or another corporation has used a corporation regulated by the commission to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, penalties not recovered from the regulated corporation would be authorized to be recovered from the individual or other corporation. The bill would authorize the commission to enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties, would authorize the commission to bring an action pursuant to the Uniform Fraudulent Transfer Act, and make the fraudulent transfer of assets to avoid paying a commission imposed fine or penalty subject to prosecution under certain existing criminal provisions. By expanding the definition of a crime, the bill would impose a state-mandated local program.

This bill would extend certain existing authorizations for the state or a department or agency of the state to levy on property by warrant or notice of levy pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, to any provision of the Public Utilities Code.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 688.020 of the Code of Civil Procedure
- 2 is amended to read:

1 688.020. (a) Except as otherwise provided by statute, ~~whenever~~  
2 ~~if~~ a warrant may properly be issued by the state, or by a department  
3 or agency of the state, pursuant to any provision of the Public  
4 Resources Code, *Public Utilities Code*, Revenue and Taxation  
5 Code, or Unemployment Insurance Code, and the warrant may be  
6 levied with the same effect as a levy pursuant to a writ of execution,  
7 the state or the department or agency of the state authorized to  
8 issue the warrant may use any of the remedies available to a  
9 judgment creditor, including but not limited to, those provided in  
10 Chapter 6 (commencing with Section 708.010) of Division 2.

11 (b) The proper court for the enforcement of ~~such~~ *those* remedies  
12 is a court of any of the following counties:

13 (1) The county where the debtor resides.

14 (2) The county where the property against which enforcement  
15 is sought is located.

16 (3) If the debtor does not reside in this state, any county of this  
17 state.

18 SEC. 2. Section 688.030 of the Code of Civil Procedure is  
19 amended to read:

20 688.030. (a) ~~Whenever~~ *If* pursuant to any provision of the  
21 Public Resources Code, *Public Utilities Code*, Revenue and  
22 Taxation Code (excluding Sections 3201 to 3204, inclusive), or  
23 Unemployment Insurance Code, property is levied upon pursuant  
24 to a warrant or notice of levy issued by the state or by a department  
25 or agency of the state for the collection of a liability:

26 (1) If the debtor is a natural person, the debtor is entitled to the  
27 same exemptions to which a judgment debtor is entitled. Except  
28 as provided in subdivisions (b) and (c), the claim of exemption  
29 shall be made, heard, and determined as provided in Chapter 4  
30 (commencing with Section 703.010) of Division 2 in the same  
31 manner as if the property were levied upon under a writ of  
32 execution.

33 (2) A third person may claim ownership or the right to  
34 possession of the property or a security interest in or lien on the  
35 property. Except as provided in subdivisions (b) and (c) or as  
36 otherwise provided by statute, the third-party claim shall be made,  
37 heard, and determined as provided in Division 4 (commencing  
38 with Section 720.010) in the same manner as if the property were  
39 levied upon under a writ of execution.

40 (b) In the case of a levy pursuant to a notice of levy:

1 (1) The claim of exemption or the third-party claim shall be  
2 filed with the state department or agency that issued the notice of  
3 levy.

4 (2) The state department or agency that issued the notice of levy  
5 shall perform the duties of the levying officer, except that the state  
6 department or agency need not give itself the notices that the  
7 levying officer is required to serve on a judgment creditor or  
8 creditor or the notices that a judgment creditor or creditor is  
9 required to give to the levying officer. The state department or  
10 agency in performing the duties of the levying officer under this  
11 paragraph has no obligation to search public records or otherwise  
12 seek to determine whether any lien or encumbrance exists on  
13 property sold or collected.

14 (c) A claim of exemption or a third-party claim pursuant to this  
15 section shall be heard and determined in the superior court in the  
16 county where the property levied upon is located.

17 SEC. 3. Section 1701.2 of the Public Utilities Code is amended  
18 to read:

19 1701.2. (a) If the commission pursuant to Section 1701.1 has  
20 determined that an adjudication case requires a hearing, the  
21 procedures prescribed by this section shall be applicable. The  
22 assigned commissioner or the assigned administrative law judge  
23 shall hear the case in the manner described in the scoping memo.  
24 The scoping memo shall designate whether the assigned  
25 commissioner or the assigned administrative law judge shall preside  
26 in the case. The commission shall provide by regulation for  
27 peremptory challenges and challenges for cause of the  
28 administrative law judge. Challenges for cause shall include, but  
29 not be limited to, financial interests and prejudice. The regulation  
30 shall provide that all parties are entitled to one peremptory  
31 challenge of the assignment of the administrative law judge in all  
32 cases. All parties are entitled to unlimited peremptory challenges  
33 in any case in which the administrative law judge has within the  
34 previous 12 months served in any capacity in an advocacy position  
35 at the commission, been employed by a regulated public utility,  
36 or has represented a party or has been a party of interest in the  
37 case. The assigned commissioner or the administrative law judge  
38 shall prepare and file a decision setting forth recommendations,  
39 findings, and conclusions. The decision shall be filed with the  
40 commission and served upon all parties to the action or proceeding

1 without undue delay, not later than 60 days after the matter has  
2 been submitted for decision. The decision of the assigned  
3 commissioner or the administrative law judge shall become the  
4 decision of the commission if no further action is taken within 30  
5 days. Any interested party may appeal the decision to the  
6 commission, provided that the appeal is made within 30 days of  
7 the issuance of the decision. The commission may itself initiate a  
8 review of the proposed decision on any grounds. The commission  
9 decision shall be based on the record developed by the assigned  
10 commissioner or the administrative law judge. A decision different  
11 from that of the assigned commissioner or the administrative law  
12 judge shall be accompanied by a written explanation of each of  
13 the changes made to the decision.

14 (b) Ex parte communications shall be prohibited in adjudication  
15 cases.

16 (c) Notwithstanding any other provision of law, the commission  
17 may meet in a closed hearing to consider the decision that is being  
18 appealed. The vote on the appeal shall be in a public meeting and  
19 shall be accompanied with an explanation of the appeal decision.

20 (d) Adjudication cases shall be resolved within 12 months of  
21 initiation unless the commission makes findings why that deadline  
22 cannot be met and issues an order extending that deadline. In the  
23 event that a rehearing of an adjudication case is granted the parties  
24 shall have an opportunity for final oral argument.

25 (e) (1) *If the commission institutes an investigation on its own*  
26 *motion in an adjudication case, the commission may determine*  
27 *that the respondent lacks, or may lack, the ability to pay potential*  
28 *penalties or fines or to pay restitution that may be ordered by the*  
29 *commission.*

30 (2) *If the commission determines that a respondent lacks, or*  
31 *may lack, the ability to pay, the commission may order the*  
32 *respondent to demonstrate, to the satisfaction of the commission,*  
33 *sufficient ability to pay potential penalties, fines, or restitution*  
34 *that may be ordered by the commission. The respondent shall*  
35 *demonstrate the ability to pay, or make other financial*  
36 *arrangements satisfactory to the commission, within seven days*  
37 *of the commission adopting an investigation order. The commission*  
38 *may delegate to the attorney the determination of whether a*  
39 *sufficient showing has been made by the respondent of an ability*  
40 *to pay.*

1 (3) *If within seven days of the commission adopting an*  
2 *investigation order, the respondent makes a request for impartial*  
3 *review, the respondent shall be entitled to review by an*  
4 *administrative law judge, of the sufficiency of the showing made*  
5 *by the respondent of the respondent's ability to pay. The*  
6 *administrative law judge may enter temporary orders modifying*  
7 *any financial requirement made of the respondent pending the*  
8 *final review by the administrative law judge.*

9 SEC. 4. Section 2104 of the Public Utilities Code is amended  
10 to read:

11 2104. Except as provided by Sections 2100 and 2107.5, *and*  
12 *in addition to the remedies provided in Section 688.020 or 688.030*  
13 *of the Code of Civil Procedure*, actions to recover penalties under  
14 this part shall be brought in the name of the people of the State of  
15 California, in the superior court in and for the county, or city and  
16 county, in which the cause or some part thereof arose, or in which  
17 the corporation complained of has its principal place of business,  
18 or in which the person complained of resides. The action shall be  
19 commenced and prosecuted to final judgment by the attorney *or*  
20 *agent of the commission.* ~~In any action, all~~ All fines and penalties  
21 ~~incurred up to the time of commencing the action~~ may be sued for  
22 and recovered. *If the commission has determined, after notice and*  
23 *an opportunity to be heard, that an individual or another*  
24 *corporation has used a corporation regulated by the commission*  
25 *to perpetrate a fraud, circumvent a statute, or accomplish some*  
26 *other wrongful or inequitable purpose, penalties not recovered*  
27 *from the regulated corporation may be recovered from the*  
28 *individual or other corporation. The commission may enjoin the*  
29 *sale of a public utility's or common carrier's assets to satisfy*  
30 *unpaid fines and penalties. The commission may use any of the*  
31 *remedies afforded to a creditor under the Uniform Fraudulent*  
32 *Transfer Act (Chapter 1 (commencing with Section 3439) of Title*  
33 *2 of Part 2 of Division 4 of the Civil Code).* Respondents who  
34 fraudulently transfer assets to avoid paying commission imposed  
35 fines or penalties are subject to prosecution under Sections 154,  
36 531, and 531a of the Penal Code. In all of these actions, the  
37 procedure and rules of evidence shall be the same as in ordinary  
38 civil actions, except for prosecutions under the Penal Code or as  
39 otherwise herein provided. All fines and penalties recovered by  
40 the state in any action, together with the costs thereof, shall be

1 paid into the State Treasury to the credit of the General Fund. Any  
2 action may be compromised or discontinued on application of the  
3 commission upon the terms the court approves and orders.

4 SEC. 5. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.